



**European Public Procurement Legislation and Architectural Services
Recommendations and Guidelines for Transposition to National Law**

**Adopted by the General Assembly of the ACE
On
20th November 2004**

**Glossary and Annex 3 Awarding Criteria
Corrected by T Maibaum and HG Brunnert 25 May 2005**

Contents

- I. Introduction**
- II. Recommendations for the transposition of the Legislative Package into National law**
- II. Best practice Guidelines**
- III. Recommendations for Design Contests (Architectural Competitions)**
- IV. Glossary**
- VI. Annexes**

I. Introduction

The Architects' Council of Europe (ACE) is an organisation, based in Brussels, whose Membership consists of the professional representative organisations of all twenty-five European Union Member States and the three Accession States as well as Switzerland and Norway. As such it is an organisation that represents the interests of about 450,000 architects from Europe.

In February 2004, the legislative package simplifying and modernizing the public procurement directives and adapting them to modern administrative needs was definitely adopted by the EU's Council of Ministers and the European Parliament. The directives impose EU-wide competitive tendering for public contracts above a certain value and transparency and equal treatment for all tenderers to ensure that a contract is awarded to the tender offering best value for money. The amended directives will lead to substantial changes in national public procurement law and its provisions have to be transposed into national law within less than two years. Member States should use this opportunity to amend national public procurement legislation to the maximum benefit of citizens, economic operators and contracting authorities. The ACE regards supporting this goal, especially in the area of procurement of architectural services, as an important objective.

This best practice paper contains recommendations and mechanisms. Firstly, the guidelines make recommendations on best practice on a chronological basis throughout the procurement procedure. Secondly, recommendations are given on the application of European provisions for design contests (architectural competitions). The glossary is intended to give an understanding of terminology and gives a summary of the basic ACE recommendations for the procurement of architectural services. Last but not least, the guidelines will demonstrate appropriate mechanisms for the transposition of the new directives into national law on architectural services.

This paper does not focus only on the evaluation of good practice in Member States. Particular attention has also been paid to malpractice in procurement procedures at national level. Such experiences have to be taken into account so as to eliminate procurement practices which undermine the principles of transparency, competition and non-discrimination. ACE would welcome the extensive use of these guidelines within the Member States.

These recommendations were adopted by the ACE General Assembly, representing professional architectural organisations in all EU Member States, on the 20th November 2004 in Brussels.

II. Recommendations for the transposition of the new Public Procurement Directives published in April 2004 in the EU Official Journal into National Law

The Procurement directives offer a set of new instruments and procedures, some of which are not suitable for the procurement of architectural services. The Procurement Directives offer a framework for procuring a wide range of services, supplies, goods and works. Some of the procedures are not necessarily required or useful for the procurement of architectural services, but on the other hand, the directives allow a transposition on a national level, which takes into account the specific nature of architectural services. Therefore, the ACE recommends careful consideration of the following comments on the suitability of the new procedures and instruments for the procurement of architectural services.

1. New procedures

The competitive dialogue

Because of the definition given in the directive, the ACE is of the opinion that it is not suitable for the procurement of architectural services. Additionally, this procedure raises serious problems concerning the protection of author's rights. The Directive describes several situations where it would be impossible for the contracting authority to "objectively" define the means of satisfying its needs, or of assessing what the market can offer, in the way of technical solutions and/or financial legal solutions. "Objectively" means that this does not depend on the individual capacity of the contracting authority, and that even by a definition of purely performance or functional requirements (Art 23 paragraphs 3b, c and d) no useful solution can be expected (see Article 1, paragraph II(c)). This situation may arise, in particular, with the implementation of important integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing, the financial and legal make up of which cannot be defined in advance ("particularly complex projects"). These considerations show that the competitive dialogue is tailored for projects – e.g. certain public private partnership models – which cannot be handled in a standard procedure.

Electronic auctions

Electronic auctions are suitable mechanisms in cases when the contract specifications can be established with precision. Under the definition of this procedure, the Directive has clarified that certain service contracts and certain works contracts having intellectual performance as their subject matter, such as the design of works, may not be the object of electronic auctions. See Article 1 paragraph 7. However, the electronic auction makes sense in the field of procurement of homogenous and standardised goods or services.

The nature of architectural services excludes it from the scope of application of the electronic auction. In this case, there is no obligation to transpose the procedure into national law. If Member States do so, it must be made clear that architectural services are excluded.

2. New instruments

Framework agreements

Framework agreements are generally not suitable for architectural services. The purpose of framework agreements is to establish the terms governing contracts to be awarded during a given period with regard to price and, where appropriate, the quantity envisaged (see Article 1 paragraph 5). Every single project should be open to competition, as every building deserves a specific quality approach. The awarding decision must be based on qualitative criteria. Architectural services are not measured by price and quantity. Secondly, framework agreements – even with the time limit of four years – restrict access to single contracts.

Dynamic purchasing systems

The dynamic purchasing system is designed for commonly used purchases, the characteristics of which, being generally available on the market, meet the requirements of the contracting authority (see Article 1 paragraph 6 and see also 1.2). Consequently, this is not a useful or appropriate instrument for the procurement of architectural services.

3. Architectural Design Contest

The ACE recommends the transposition of the directives in such a way that, in the case of a design contest, the contract is awarded to one of the winners (successful candidates) of the design contest

by using the negotiated procedure without publication of a contract notice (Art. 31 paragraph 3). If the contracting authority chooses the negotiated procedure under Article 30 paragraph 1c, an architectural design contest should be integrated to obtain the best results for the design of works. The combination of the above instruments (design contest and negotiated procedure) is the best way to guarantee a high degree of quality and economically beneficial results which cannot be achieved by using the open or restricted procedure (see also above under II.4)

Design contests should, in all cases, be remunerated by an adequate and fair prize allocation (payment).

4. Others

Design and build

The ACE recommends a clear separation between design and execution of works. The European legislator has decided not to prescribe such a separation, but has clarified that the decision to award contracts separately or jointly must be determined by qualitative economic criteria, which may be defined by national law. Member States are recommended to determine such criteria on the basis of existing studies of the qualitative and economic results of separate or joint contracts. The ACE specifically draws attention to existing studies undertaken by courts of auditors which reveal the economic risks of design and build projects (see footnote 2).

III. Best Practice Guidelines

The public procurement directives provide a range of public procurement procedures which can be adopted and applied to specific procurement types, allowing the appropriate application of the European provisions to the procurement of architectural services, which are of a specific nature. Therefore existing procurement procedures have not always been the most effective for achieving the best quality in this field. For this reason the ACE, in 2000, developed general recommendations on public procurement of architectural services which evaluate the important task of the architect not only in the cultural dimension, but also in sustainability, innovation and the environment. The conclusions drawn in those recommendations were:

- the award of contracts for architectural services must focus on the quality of the service and of the technical offer and not on the price of the service,
- architectural design competitions are the best method of achieving quality,
- the architect must be in a position to act as an independent trustee of the contracting authority.

These recommendations are still valid and must be considered throughout the entire procurement process - from the first step, the definition of the project, until the awarding decision.

1. Definition of the project

The definition of the project is the first step in the procurement procedure. It is a critical phase, especially as the contracting authority has to make initial decisions which will be of considerable importance for the procurement process.

- Firstly, the contracting authority has to define the project, in the form of a brief either from its own resources or with the assistance of experts (for an example see Annex to section III – 1). The brief is the basis for the tender documents which are to be developed in the second stage.
- The brief could also be developed by holding an ideas competition.
- It is emphasised that authorities should not restrict information about contracting opportunities. In an unacceptable number of cases, such opportunities have not been listed in the TED database in the past. In some cases, public authorities have claimed urgency as an excuse for dispensing with competitive procurement requirements and appointing a contractor without competition. Information should not be confined to official Journal Notices only, but should include procedures for administrative transparency. These above cases show that inadequate access to information on public contracting, which is legally required to be provided, has been used as a means of evading public procurement provisions. Member States should be encouraged to make administrative procedures more transparent.
- A further step for the contracting authority is the decision on whether to award design and execution of work separately or jointly. The European legislator has clarified in the new directives that it is not the intention to prescribe either joint or separate contract awards. The legislator emphasises that the decision to award contracts separately or jointly must be determined by qualitative and economic criteria which may be defined by national law. The ACE has expressed the view that a separation of design and execution of work is the best option¹. This finding is based on several research projects in the Member States, among others several extensive studies undertaken by the courts of auditors². Design contests – if properly organized and handled – have proved most beneficial for the quality of public construction works.
- During the definition phase of the project, the contracting authority has to decide on the appropriate procedure. In exceptional cases, where no clear brief or performance specification can be drawn up, even by means of an ideas competition, contracting authorities might have to consider the use of the competitive dialogue (see below).

¹ RIBA has expressed another point of view.

² See for example „Finanzamt Ludwigburg – Umbau und Neubau“, published by the Ministry of Finance, Baden-Württemberg Juni 1999; Hochbau des Bundes Wirtschaftlichkeit bei Baumaßnahmen, Empfehlungen für das wirtschaftliche Planen und Ausführen von Hochbaumaßnahmen des Bundes, Hrg.;; Die Präsidentin des Bundesrechnungshofes als Bundesbeauftragte für Wirtschaftlichkeit in der Verwaltung, Bonn März 2001, S 63; Jahresbericht 2000 des Landesrechnungshofes Rheinland-Pfalz Tz. 26

- The ACE draws attention to the fact that the new directives provide for the improved inclusion of environmental aspects in the definition of projects. These play a fundamental role for the life cycle costs of buildings. It is particularly welcome that requiring high standards in this field is no longer seen as a means of discriminating against economic operators, but as an essential contribution to sustainable and environmentally-friendly development. It is emphasised that the consideration of such aspects generally requires a decision to award contracts on the basis of the economically most advantageous tender (see below).
- The definition of the project sets out which specific fields and/or experts have to be included in the project.

2. Selection criteria

As a general principle, the selection criteria defined by the contracting authority should be based on the performance of the architect. If there is a need to restrict the number of possible participants to a number which can be handled by the contracting authority, there are various ways to achieve this objective.

Good Practice

- Particularly complex projects may, on occasion, require the use of selection criteria (specific experience, references and additional special qualifications such as acoustic engineering etc) which exclude generally qualified economic operators. In such cases, the contracting authority should accept the participation of groups of economic operators.
- Selection criteria should be defined in such a way as not to exclude the participation of architects. This must be seen as a valuable resource for our economy which offers significant potential for innovative ideas and concepts.
- Candidates should be selected by independent and qualified committees.
- Limitation of the number of candidates must be made on the basis of non-discriminatory methods. If there is a need for such limitations, the selection process can, for example, take place in several stages. After a pre-selection of suitable candidates (see Chapter VII, sections 1 and 2 of the Directive) contracting authorities can organise lotteries to cut down the number of participants.

Selection criteria for procurement of architectural services

Bad Practice

- Selection criteria should never be designed with the objective of reducing the number of participants. In a considerable number of official Journal Notices, the ACE has noted the abuse of selection criteria listed by the European directives. For example, candidates or tenderers may be asked to prove their suitability by providing information on turnover during the past three fiscal years, the number of the workers employed on average during the year for the past three years, the technical personnel intended for managerial and supervisory functions etc. Such criteria generally do not relate to the quality of the service which can be expected of a candidate in the field of architectural services. Consequently, such criteria should not be used as a technical means to limit the number of participants.
- In cases where additional qualifications/skills are required, the number of participants should not be reduced by a prohibition of subcontracting. In addition, an obligation to name such subcontractors or co-contractors should only be imposed on participants after the pre-selection phase.
- Even if illegal under the directive, selection criteria are often used to favour regional participants. Several OJEC Notices have demonstrated that some contracting authorities try to restrict participation to participants with their main or branch office near the location of the project. In other cases, contracting authorities required specific experiences of characteristic local or regional design and construction.

Another general problem is the option of pre selecting candidates. The annex to the directives lists states in "contest notices" under 5 b: "Names of participants already selected, if any."

There may be a need to pre-select qualified candidates in some cases. For example, if there are successful candidates from a previous ideas or urban design contest or an architect of a building or

complex to be extended. The method of pre selection may not be used to circumvent competition, e.g. by pre selecting candidates exclusively on a regional level.

3. Evaluation criteria

In design contests, juries need clear evaluation criteria for assessing the projects submitted by candidates. These criteria, which must be published in the contest notice, should be chosen from the criteria listed below (see Annex to section III – 3).

4. Awarding criteria

Award criteria must be suitable for the identification of the Economically Most Advantageous Tender (EMAT). Consequently, the criteria should relate specifically to the particular project. Award criteria for architectural services must give primary importance to the quality of the technical offer. Such criteria include aesthetic, economic, functional and environmental characteristics, operating and life cycle costs, cost effectiveness and integration into the built environment including social and infrastructural aspects. These criteria can be most effectively evaluated in a design contest.

Therefore, awarding criteria for architectural services must be based on the EMAT and not on the price of the architects' service only. A low offer leads to a low standard in the final product. The award criteria offer a wide range of possibilities and opportunities for criteria which guarantee the best results for public planning and building.

5. Adequate procedures

Evaluation of different national procurement models for architectural services shows a considerable similarity in the use of certain instruments aimed at achieving a high quality service or of the architectural solution to the problem. However, existing procurement procedures used in this field have not always been effective. Most national procurement procedures for architectural services are directly based on the provisions for the design contest or contain elements of the design contest: specifically, juries and technical bids/outline solutions are used in several types of procedures.

As a result of an evaluation of the suitability and results of different national procedures, the ACE has come to the conclusion that the most advantageous way to procure architectural services is the two-stage design contest followed by a negotiated procedure without prior publication. The ACE draws attention to the fact that architectural competitions (design contests) can be made obligatory at national level without being in conflict with European procurement legislation.

In the case of Public Private Partnerships the Design Contest can provide optimum results in terms of quality and economic advantages (for details see under: recommendations for architectural competitions) and guarantees the quality of the outcome for the public partner.

The ACE has specifically evaluated the advantages and disadvantages of the integration of design contests in the open (and as well in the restricted) procedure ("two envelope system"). In principle the concept of evaluating technical bids and price bids in consecutive phases makes sense. On the other hand, this leads to an unnecessary waste of economic resources as all the participants have to develop proposals up to a detailed level to allow the price to be decided. Therefore the ACE stresses that the integration of the design contest is only operative and economically viable when it takes place within the negotiated procedure.

Although the general procurement system of the directives is based on competitive procedures, there are exceptions where direct negotiations without prior publication is allowed e.g. Article 31, paragraph (1)(c). As the publication is the basic element of transparency, access and opening up of competition in public procurement, the abuse of these exemption rules must be efficiently monitored. In many cases this is used only to evade procurement procedures which are not acceptable.

Such malpractices have significant additional cost implications together with poor quality. In the light of this, the ACE recommends the amendment of national rules on the accessibility of (general) information on future procurement projects of contracting authorities (see also above).

IV. Recommendations for Design Contests

The awarding of contracts for architectural services must focus on the quality of the service and of the technical offer and not on the price of the service. Architectural design competition is one of the best means to provide for quality. It demonstrates the skills of the profession and emphasizes quality based awarding criteria.

In respect of the great intellectual and economic investment by all parties involved in such procedures, the ACE has established the following rules which comply with European public procurement law.

The following set of rules and recommendations is divided into 3 parts:

1. 10 rules, which are essentials to be respected in every procedure, called architectural competitions.
2. Recommendations on how to organise and manage the procedure.
3. Additional regulations which have to be applied within public procurement

Part 1

10 rules, which are essentials to be respected in every procedure, called architectural competitions

1 Definition of an architectural competition:

Architectural competition means the procedure of a Design Contest evaluating the ideas of architects, landscape architects and urbanists in a formalised procedure on a defined program and defined criteria, anonymously weighted by an independent Jury.

There are different kinds of competition

- project competition
- ideas competition

which can be held separately or combined in different stages. In case of a two-stage competition the jury has to be the same in both stages and the procedure is anonymous until the final decision of the jury.

2 Equal chances for all participants

- Same information level provided to all participants at the same time
- No individual exchange of information between participants and jury members
- Persons excluded from participation:
The representatives, partners or employees of the promoter or of any jury member, or any person who has been involved in the preparation of the competition, will not be eligible to compete or to assist competitors
- Questions about the brief are answered to all participants simultaneously.

3 Independent jury

- The jury shall be autonomous in its decisions or opinions.
- Where a particular professional qualification is required from participants, at least a third of the members of the jury shall hold that qualification at a high standard, and must be independent from the client.
- The jury shall examine the proposals submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice
- It shall record its ranking of projects in a report, signed by its members. This report shall contain the merits of the projects and a clear recommendation on how to proceed with the result of the competition.

4 The brief

- The competition brief must be clear and unambiguous. Competition requirements must be clearly specified. There must be a clear distinction of requirements and non-binding guidelines.
- The evaluation criteria must be stated in the brief.

- The brief has to be accepted by the jury before launching the competition.

5 Transparency of the procedure

- The **summary** of the jury's discussion and the decision making process has to be drawn up in a report.
- A jury report shall be published or distributed to the participants and the public.
- There shall be an exhibition of all entries.

6 Anonymity

- Anonymity must be observed until the jury has reached its opinion or decision

7 Prize money and remuneration

- The prize money or remuneration has to be fixed and announced in the competition brief. For the calculation of the prize money or the remuneration, there must be an adequate relationship between the required performance of the participants and the honoraria normally calculated for that task.
- In the second stage of a competition, a remuneration, which is a part of the total prize money, is paid to each participant in that stage.

8 Consequences of the jury's decision

- There must be a fair and adequate compensation for **the participants**. There must be a declaration of the client to award a contract including a sufficient scope of work to the prize winner or to one or the prize winners in a project competition.
- If an ideas competition is not followed by a project competition an adequate **remuneration** in the form of higher prize money has to be fixed.
- If the results of an ideas competition are used as a basis for the execution of a project, this has to be done in agreement with the author.

9 Copyright

- The author's rights for a competition entry remain with the author.
- The promoter is entitled to make use of the winning entries under the conditions that are laid down in the brief or agreed between the parties.

10 Dispute resolution

- Any disputes concerning competition procedures **shall** be **examined by** the relevant national professional organisation **before any legal procedures**.

V. GLOSSARY

On wording in the field of Competition for Intellectual Services in Public Procurement

Definition	Commentary	Recommendation
<p>Competition (Engl.), Concurrence (French)</p> <p>Efficiency Contest between economic operators in the market</p>	<p>Efficiency Contest in the internal market is put into a framework of rules and regulations as for example protection of Intellectual Property Rights, protection against Unfair Competition, Public Procurement Rules etc.</p>	
<p>Public Procurement</p> <p>Rules and regulations for purchasing by Public Entities</p>	<p>Public Procurement aims securing Competition and getting Best Value for Public Investments. This has to be done by the principle of Public Tendering. The legislator has established within European Public Procurement Rules several procedures to purchase goods and services:</p> <ul style="list-style-type: none"> • Open Procedure • Restricted Procedure • Negotiated Procedure • Competitive dialogue (in special cases) <p>A specific role was attributed to the Design Contest.</p>	<p>Having in view „Best value for Public Investments“, it is considered that the separation of contracts for the design and the execution of work is helpful in order to determine first best quality of the intellectual services and on this basis the best economic offer. Whereas in open, restricted and negotiated procedures the decision for the contract awarding is based on the precise program definition of the contracting authority, the competitive dialogue can be used only in cases of exceptionally complex situations without objective possibility to set up those programs and definition necessary as evaluation criteria. This is generally not the case in urban planning of architecture and engineering.</p>

Definition	Commentary	Recommendation
<p>Design Contest</p> <p>„Design Contests“ means those procedures which enable the contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes. (Directive Title I / Article I / 11 e)</p> <p>The rules for the organisation of contests shall be in conformity with Title IV, Article 66 to 74 and shall be communicated to those interested in participating in the contest.</p> <p>The admission of participants to design contests shall not be limited:</p> <ul style="list-style-type: none"> - by reference to the territory or part of the territory of a Member State; - on the grounds that, under the law of the Member State in which the contest is organised, they would be required to be either natural or legal persons. (Directive / Title IV / Article 66/2) <p>This title applies to:</p> <ul style="list-style-type: none"> - Design Contests organised as a part of a procedure leading to the award of a public service contract (Directive / Title IV / Article 67/2a) - Design Contests with prizes and/or payments to participants (Directive / Title IV / Article 67/2b) 	<p>In establishing Rules for Design Contests, the national legislator has to respect the framework set out in the Directive.</p> <p>Design Contest can be organized as Open or Restricted Competition concerning the access of interested operators.</p>	<p>Design Contests should be organized within the Negotiated Procedure, either as a first step of the procedure in form of an open competition or after selection of candidates as a Restricted Competition followed by a Negotiated Procedure without prior publication. The Directive provides for this concept. „Cases justifying use of the negotiated procedure without publication of a contract notice</p> <ul style="list-style-type: none"> - for public service contracts, when the contract concerned follows a design contest and must, under the applicable rules, be awarded to the successful candidate or to one of the successful candidates: in the latter case, all successful candidates must be invited to participate in the negotiations“ (Directive / Title II / Article 31/ 3) <p>The essentials of those formalized Design Contests are</p> <ul style="list-style-type: none"> - equal chance for all participants - independent Jury - anonymity until the decision of Jury - transparency.

Definition	Commentary	Recommendation
<p>Architectural Competition</p> <p>Means a procedure of Design Contest opposing the ideas of architects, interior-, landscape- and conservation-architects, planners, urbanists and industrial designers in a formalized procedure on a defined program and defined criteria weighted by an independent Jury in an anonymous way.</p>	<p>The nature of Architectural Services is in general such „that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures.“ (Directive / Title II / Article 30/1c)</p> <p>Architectural Competitions can also be organized as multi-professionals Competition between architects, engineers and other disciplines for infrastructure.</p>	
<p>Ideas Competition</p> <p>Are those Architectural Competitions mainly in the field of architecture, planning, urbanism, landscaping, conservation and design aiming for broad conceptions without the intention of direct execution. They also can be the first step of a sequence of competitions with participation of the winners in a following Project Competition.</p>	<p>Special attention is required with respect to Authors Rights.</p>	<p>For an Idea Competition without consequence of a contract the normal fee for a Project Competition has to be raised appropriately.</p> <p>In case of an Idea Competition followed by a Project Competition, only the winners of the Idea Competition should be invited to participate in the Project Competition.</p> <p>Participants in an Idea Competition should agree in advance that a following Project Competition is based on one concept or several ideas of the Ideas' Competition proposed by the Jury.</p> <p>If after an Idea Competition, the client changes his intention towards development of a project, he has to do this in agreement with the author.</p>

Definition	Commentary	Recommendation
<p>Project Competition</p> <p>Within those Competitions based on a detail program and precise performance requirements, the conceptual options for the realisation of a project are compared.</p>	<p>As consequence of the result of such a competition the winner/the winners should be entrusted to take over the responsibility for the following elaboration of the project.</p>	<p>The scope of services awarded should guarantee the implementation of the author's concept. (s. further explanation best practise paper)</p>
<p>Realisation Competitions</p> <p>see Project Competition</p>		
<p>Two stages Competition</p> <p>A series of steps within one competition to develop either a program and the approach of a solution either to reduce the number of competitors while developing the depth of a design.</p>	<p>The Two Stages Competition can also be used to work out an urban design followed by a Project Design. This competition is useful to minimize the expenses of the procedure both for client and competitors.</p>	<p>This sort of competition is recommended in all cases where selection by objective criteria is not able to reduce the number of competitors sufficiently; this gives the opportunity in using the procedure by evaluating the quality of strategies in the benefit of the project while selection by the competitors.</p>
<p>Open procedure</p> <p>'Open procedures' means those procedures whereby any interested economic operator may submit a tender. (Directive Title I / Article 1 / 11 a)</p>	<p>Technical specifications are under Directive/ Article 23/3b to be formulated, among others, „in terms of performance or functional requirements; the latter may include environmental characteristics. However, such parameters must be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract.“</p>	

Definition	Commentary	Recommendation
<p>Restricted Procedure</p> <p>'Restricted Procedures' means those procedures in which any economic operator may request to participate and whereby only those operators invited by the contracting authority may submit a tender. (Directive / Title I / Article 1 / 11 b)</p>	<p>see above</p>	
<p>Negotiated Procedure</p> <p>'Negotiated Procedures' means those procedures whereby the contracting authorities consult the economic operators of their choice and negotiate the terms of contract with one or more of these. (Directive / Title I / Article 1 / 11 d)</p> <p>Cases justifying the Negotiated Procedure (with publication of a contract notice) are „intellectual services such as services involving the design of works, insofar as the nature of the services to be provided is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures“.</p> <p>(Directive / Title II / Article 30 / 1c)</p>	<p>After decision of the Competition Jury the Negotiated Procedure continues on the basis of the Jury Report, its recommendations and the awarding criteria. If there is a deviation from the Jury's decision there should be an explanation to be laid down in a protocol</p>	<p>Consequently, the Negotiated Procedure is the only procedure appropriate for architectural services. Aiming at getting a maximum of competition, a Design Contest should be organized within or before this procedure.</p>

Definition	Commentary	Recommendation
<p>Competitive Dialogue</p> <p>‘Competitive dialogue’ is a procedure in which any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender. (Directive / Title I / Article 1 / 11 c)</p> <p>- Where contracting authorities consider that use of open and restricted procedures will not allow award of the contract, Member States may provide for those authorities to make use of the competitive dialogue in accordance with the arrangements laid down in this Article:</p> <p>(a) where they are not objectively able to define the technical means in accordance with Article 23(3) (b), (c) or (d), capable of satisfying their needs or objectives, and/or</p> <p>(b) where they are not objectively able to specify the legal and/or financial make-up of a project.</p> <p>A public contract shall be awarded on the sole basis of the award criterion for the most economically advantageous tender.</p>	<p>Contracting authorities which carry out exceptionally complex projects may, without this being due to any blame on their part, find it objectively impossible to define the means of satisfying their needs or of assessing what the market can offer in the way of technical solutions and/or financial/legal solutions. This situation may arise in particular with the implementation of important integrated transport infrastructure projects, large computer networks, projects involving complex and structured financing the financial and legal make-up of which cannot be defined in advance. To the extent that the use of open or restricted procedures does not allow the award of such contracts, a flexible procedure should be provided which preserves not only competition between economic operators but also the need for the contracting authorities to discuss the contract with each candidate.</p> <p>However, this procedure must not be used in such a way as to restrict or distort competition, particularly by any fundamental aspects of the offers or by imposing substantial new requirements on the successful tenderer, or by involving any tenderer other than the one selected as the most economically advantageous. (Directive / Whereas (31))</p>	<p>Procedures only to be used in cases where there is no possibility to allow a Design Architectural Competition on the basis of equal criteria and evaluation assessment.</p>

Definition	Commentary	Recommendation
<p>Competitive Dialogue</p> <ul style="list-style-type: none"> - The contracting authorities shall publish a contract notice setting out their needs and requirements which they shall define in that notice and/or in a descriptive document. (article 29 / 2) - The contracting authorities shall open, with the candidates selected in accordance with the relevant provisions of Articles 44 to 52, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs. They may discuss all aspects of the contract with the chosen candidates during this dialogue. - During the dialogue, the contracting authorities shall ensure equality of treatment among all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. - Contracting authorities may not reveal to the other participants solutions proposed or other confidential communicated by a participant in the dialogue without his/her agreement. - Contracting authorities may provide for the procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria in the contract notice or the descriptive document. The contract notice or the descriptive document shall indicate that recourse may be had to this option. - The contracting authority shall continue such dialogue until it can identify the solution or solutions, if necessary after comparing them, which are capable of meeting its needs. 		

Definition	Commentary	Recommendation
<p>Competitive Dialogue</p> <ul style="list-style-type: none"> - Having declared that the dialogue is concluded and having so informed the participants, contracting authorities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. These tenders shall contain all the elements required and necessary for the performance of the project. These tenders may be clarified, specified and fine-tuned at the request of the contracting authority. However, such clarification, specification, fine-tuning or additional information may not involve changes to the basic features of the tender or the call for tender, variations in which are likely to distort competition or have a discriminatory effect. - Contracting authorities shall assess the tenders received on the basis of the award criteria laid down in the contract notice or the descriptive document and shall choose the most economically advantageous tender in accordance with Article 53. - At the request of contracting authority, the tenderer identified as having submitted the most economically advantageous may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided. This does not have the effect of modifying substantial aspects of the tender or of the call for tender and does not risk distorting competition or causing discrimination. - The contracting authorities may specify prices or payments to the participants in the dialogue. (Directive / Chapter V / Article 29) 		

Definition	Commentary	Recommendation
<p>Design and Built</p> <p>'Public works contracts' are public contracts having as their object either the execution, or both the execution and design, of works related to one of the activities within the meaning of Annex I or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A 'work' means the outcome of building or civil engineering works taken as a whole which is sufficient to itself to fulfil an economic or technical function. (Directive / Title I / Article 1 / 2 (b))</p>	<p>In view of the diversity of public works contracts, contracting authorities must be able to make provision for contracts for the design and execution of work to be awarded either separately or jointly. It is not the intention of this Directive to prescribe either joint or separate contract awards. The decision to award contracts separately or jointly must be determined by qualitative and economic criteria which may be defined by national law. In order to favour the access of small and medium-sized undertakings to the public procurement market, it is advisable to include provisions on subcontracting. (Directive / Whereas / (9) + (32)</p>	<p>In duly justified cases, the decision based on the awarding criteria should be organized in steps, first weighting the quality of the project. In this process the Authors Rights should be respected.</p>
<p>Threshold</p> <p>The thresholds are regularly revised under Article 78 of the Directive. They are published in the Official Journal of the European Union.</p>		

<p>Definition</p> <p>Selection criteria</p> <p>In restricted procedures, negotiated procedures with publication of a contract notice and in the competitive dialogue procedure, contracting authorities may limit the number of suitable candidates they will invite to tender, to negotiate or to conduct a dialogue with, provided a sufficient number of suitable candidates is available. The contracting authorities shall indicate in the contract notice the objective and non-discriminatory criteria or rules they intend to apply, the minimum number of candidates they intend to invite and, where appropriate, the maximum number. (Directive / Title II / Article 44 / 3)</p> <p>Where design contests are restricted to a limited number of participants, the contracting authorities shall lay down clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition. (Directive / Title IV / Article 72)</p>	<p>Commentary</p> <p>A contracting authority may limit the number of candidates in the restricted and negotiated procedures with publication of a contract notice and in the competitive dialogue. Such a reduction of candidates should be performed on the basis of objective criteria indicated in the contract notice. These objective criteria do not necessarily imply weightings. For criteria relating to the personal situation of economic operators, a general reference in the contract notice to the situations set out in Article 45 may suffice.</p> <p>In the competitive dialogue and negotiated procedures with publication of a contract notice, in view of the flexibility which may be required and the high level of costs associated with such methods of procurement, contracting authorities should be entitled to make provision for the procedure to be conducted in successive stages in order to gradually to reduce, on the basis of previously indicated contract award criteria, the number of tenders which they will go on to discuss and negotiate. This reduction should, insofar as the number of appropriate solutions or candidates allows, ensure that there is genuine competition.</p>	<p>Recommendation</p> <p>Selection criteria have to be objective not relating to the solution of a given problem.</p> <p>Because of the difficulty to establish precise and detailed Selection Criteria for Intellectual Services especially in the field of architecture to restrict the number of suitable candidates, it is recommended to continue the selection of candidates by Evaluation Criteria on concept proposals within a Design Contest or a sequence of Competitions, a selection also can be done by methodical approach.</p> <p>Selection criteria are in the responsibility of the awarding authority.</p>

Definition	Commentary	Recommendation
<p data-bbox="207 1870 231 2083">Selection criteria</p>	<p data-bbox="263 772 1284 1400">Verification of the suitability of tenderers, in open procedures, and of candidates, in restricted and negotiated procedures with publication of a contract notice and in the competitive dialogue, and the selection thereof, must be carried out in transparent conditions. For this purpose, non-discriminatory criteria should be indicated which the contracting authorities may use when selecting competitors and the means which economic operators may use to prove they have satisfied those criteria. In the same spirit of transparency, the contracting authority must be required, as soon as a contract is put out to competition, to indicate the selection criteria it will use and the level of specific competence it may or may not demand of the economic operators before admitting them to the procurement procedure. Verification of the suitability of tenderers, in open procedures, and of candidates, in restricted and negotiated procedures with publication of a contract notice and in the competitive dialogue, and the selection thereof, must be carried out in transparent conditions. For this purpose, non-discriminatory criteria should be indicated which the contracting authorities may use when selecting competitors and the means which economic operators may use to prove they have satisfied those criteria. In the same spirit of transparency, the contracting authority must be required, as soon as a contract is put out to competition, to indicate the selection criteria it will use and the level of specific competence it may or may not demand of the economic operators before admitting them to the procurement procedure. (Directive / Whereas (27) (27a) (29)</p>	

Definition	Commentary	Recommendation
<p>Evaluation criteria</p> <p>Criteria indicated in the contest notice as basis for decisions of the Jury</p> <ul style="list-style-type: none"> - It shall examine the projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice. <p>(Directive / Chapter III / Title IV / Article 74, 2)</p> <p>See also Annex VII D 7)</p> <p>Information which must appear in service contest notices: criteria which will be applied in the evaluation of the projects.</p>		<p>In case of a contest, evaluation criteria are solely in the responsibility of an Independent Jury.</p>
<p>Contract award criteria</p> <ul style="list-style-type: none"> - Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criteria on which the contracting authorities shall base the award of public contracts shall be either: <ul style="list-style-type: none"> - when award is made to the tender most economically advantageous for the contracting authorities, various criteria linked to the subject-matter of the public contract in question: for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion or - the lowest price only. 	<p>To ensure compliance with the principle of equality of treatment in the award of contracts, it is appropriate to lay down an obligation – established by case law - to ensure the necessary transparency to enable all tenderers to be reasonably informed of the criteria and arrangements which will be applied to identify the most economically advantageous tender. It is therefore the responsibility of contracting authorities to indicate the criteria for the award of the contract and the relative weighting given to each of those criteria in sufficient time for tenderers to be aware of them when preparing their tenders. (Directive / Whereas (46))</p>	<p>In case of an architectural competition it is an obligation to put a clear statement in the Jury's report on which basis the contract should be awarded and if needed what are the aspects to be clarified the final decision for the contract awarding, is in full responsibility of the awarding authority. Any participant of an architectural competition has to respect the laws, regulations of the country/region where the competition has been organized.</p>

Definition	Commentary	Recommendation
<p>Contract award criteria</p> <p>- Without prejudice to the provisions of the third subparagraph, in the case referred to in paragraph 1(a), the contracting authority shall specify in the contract notice or in the contract documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.</p> <p>Those weightings can be expressed by providing for a range with an appropriate maximum spread.</p> <p>Where, in the opinion of the contracting authority, weighting is not possible for demonstrable reasons, the contracting authority shall indicate in the contract notice or contract documents or, in the case of a competitive dialogue, in the descriptive document, the criteria in descending order of importance. (Directive / Chapter VII / Article 53 / 1a, 1b + 2)</p>	<p>Where the contracting authorities choose to award a contract to the most economically advantageous tender, they shall assess the tenders in order to determine which one offers the best value for money. In order to do this, they shall determine the economic and quality criteria which, taken as a whole, must make it possible to determine the most economically advantageous tender for the contracting authority. (Directive / Whereas (46))</p>	
<p>Anonymity</p> <p>The Jury shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.</p> <p>Anonymity must be observed until the jury has reached its opinion or decision. (Directive / Chapter III / Title IV / Article 74, 2,4)</p>	<p>If candidates need to be invited to answer questions which the Jury has recorded in the minutes to clarify any aspects of the projects, before the decision of the Jury, this has to be done in respect of anonymity. (Directive / Chapter III / Title IV / Article 63a /4)</p>	<p>The clarification of important questions pointed out by the Jury has to be answered in an anonymous way. Their clarification should preferably be carried out in the negotiated procedure.</p>

Definition	Commentary	Recommendation
<p>Independent Jury</p> <p>The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of the members of the jury shall have that qualification or an equivalent qualification. (Directive / Chapter III / Title IV / Article 73)</p>	<p>Excluded from participating in a jury are all persons who:</p> <ul style="list-style-type: none"> - are close relatives of or have a close familiar relationship with any participant - are partners, employees or employers in businesses with any participant - are interested in having any contract as a professional for the competition object 	<p>Because the decision of the Jury is a professional one and not a contract awarding decision, it is preferable to have a majority of independent professional members with the same qualification as demanded from participants representing all professional aspects of the project in contest.</p> <p>Jury member should be named before publication of the contest. They cannot be changed during the contest, therefore substitute members shall be named also.</p> <p>Each Jury member has to fully agree with all details of competition brief and evaluation criteria; there should be a consultation with all Jury members before launching a competition.</p>
<p>Technical Commission</p> <p>The Technical Commission of a competition has to check all entries in detail for prepare the Jury panel.</p>	<p>The composition of the Technical Commission is defined by nature of the project and demands in the competition brief. The approach of a special project can show the necessity of enlarging the commission by additional members.</p>	<p>The Technical Commission is composed of at least one adviser having the same education as demanded from the competitors. The commission has to prepare a report on every project examined.</p> <p>The Technical Commission shall advise the Jury during evaluation of the entries by present in the Jury panel.</p>

Definition	Commentary	Recommendation
<p>Decisions of the Jury</p> <p>The Jury shall be autonomous in its decisions or opinions. The Jury shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice. (Directive / Chapter III / Title IV / Article 74, 1+2)</p>		
<p>Transparency</p> <p>Contracting authorities which carry out a design contest shall make known their intention by means of a contest notice. (Directive / Title IV / Article 69, 1)</p> <p>Contracting authorities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way. (Directive/ Title I / Article 2)</p> <p>Contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure or implement a dynamic purchasing system; that information shall be given in writing upon request to the contracting authorities. (Directive / Chapter VI /Section1 / Article 41)</p>	<p>To ensure development of effective competition in the field of public contracts, it is necessary that contract notices drawn up by the contracting authorities of Member States be advertised throughout the Community. The information contained in these notices must enable economic operators in the Community to determine whether the proposed contracts are of interest to them. (Directive / Whereas (36)</p> <p>The contract must be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equality of treatment and which guarantee that tenders are assessed in conditions of effective competition. As a result, it is appropriate to allow the application of two award criteria only: „the lowest price“ and „the most economically advantageous tender“. (Directive / Whereas (46)</p>	<p>The jury members and their substitutes are to be published in advance.</p>

Definition	Commentary	Recommendation
<p>Competition Brief</p>	<p>The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To this end, it must be possible to submit tenders which reflect the diversity of technical solutions. (Whereas (17))</p>	<p>On account of the need to evaluate and take decisions solely on the criteria, provisions and limitations of the competition brief, it is stipulated to consult the Jury on the competition object before launching the contest. There should be a clear distinction between stipulations and suggestions. All Jury members are obliged to agree with and sign the competition brief.</p>
<p>Report of Jury</p> <p>To answer the needs of transparency, the Jury „shall record its ranking of projects in a report signed by its members, made according to the merits of each project together with its remarks and any points which may need clarification.</p> <ul style="list-style-type: none"> - Candidates may be invited, if need be, to answer questions which the jury has recorded in the minutes to clarify any aspects of the projects. - Complete minutes shall be drawn up of the dialogue between jury members and candidates“ . (Directive / Chapter III / Title IV / Article 74, 3, 5,6) 	<p>The Jury has to state in his report that the decisions are on the base of all evaluation criteria, provisions and possible limitations of the Competition Brief.</p>	<p>In all cases the report has to be published.</p>

Definition	Commentary	Recommendation
<p>Winner of competition</p> <p>The winner/winners are those after evaluation of all entries being accepted on the grounds of the Competition Brief the Jury ranked as first and following prize- winners.</p> <p>The winner/winners are candidates within the negotiated procedure for the award of the contract (without further publication).</p> <p>„when the contract concerned follows a design contest and must, under the applicable rules, be awarded to the successful candidate or to one of the successful candidates, in the latter case, all successful candidates must be invited to participate in the negotiations.“ (Directive / Article 31, 3)</p>		<p>For architectural competitions prize money in form of at least a 1., 2., 3. prize should be fixed as an equivalent for the idea - and economic investment of the participants.</p> <p>The Jury has to make a clear ranking of the competition entries. Ex equo ranking only can be made by unanimity.</p> <p>The reasons for have to be laid down in the report.</p>
<p>Ranking</p> <p>The jury has to put all entries in a clear ranking which is based on the criteria of evaluation and “according to the merits of each project”.</p> <p>(Directive / Title IV / Article 74, /3)</p>		<p>The Jury can start the evaluation with grouping the entries by groups of quality. The entries of the final group should be evaluated compared in detail and put in a clear ranking supported by a written commentary on every project.</p>

Definition	Commentary	Recommendation
<p>Suitability to pursue the professional activity</p> <p>Any economic operator wishing to take part in a public contract may be requested to prove his enrolment, as prescribed in his Member State of establishment, on one of the professional or trade registers or to provide a declaration on oath or certificate as described in Annex IX A for public supply contracts and in Annex IX C for public service contracts.“</p> <p>In procedures for the award of public service contracts, insofar as candidates or tenderers have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove that they hold such authorisation or membership. (Directive / Article 46)</p>	<p>For architects, urbanists, landscape architects, interior designers professional education must be recognized by Directive 85/384/EC or 89/48/EC</p> <p>Excluded from participating in a competition are those</p> <ul style="list-style-type: none"> - having been involved in the organisation of the competition. - are close relatives of or have a close familiar relationship to any jury member. - are partners, employees or employers with any jury member. 	<p>To facilitate the access to Awarding Procedures and Design Contests, the public awarding authority should be able to refer simply to a certificate corresponding to the Directives mentioned before.</p>

V. Annexes

Annex to section III

1. Definition of the project

Content of Brief
(not exhaustive)

- reason and purpose for the project
- description of site and area
- description of task and programme
- binding stipulations and comments of the client
- necessary contributions of different planning disciplines and requirements to be meet by professional education
- economic outline, budget of project
- time requirement
- binding evaluation criteria
- binding awarding criteria
- scope of services and plans to be required
- legal basis and technical framework decisive for the project
- scope of services to be contracted
- general conditions and fees for the contract
- binding selection criteria

General remarks

- the brief must be comprehensive and clear-cut
- all requirements ought to be clear with a clear division between stipulations and suggestions

Annex to section III

2 Selection criteria for procurement of architectural services

Evidence of recognised achievement in architecture, including competition awards and commendations, buildings published, and exhibitions.

Evidence of conceptual ability in architectural design.

Experience in buildings of comparable complexity (not necessarily of the same type)

Understanding of the built context including spatial coherence in relation to the existing environment.

Understanding of spatial quality in relation to external space.

Understanding of local and regional towns and cities and the relationship of buildings to the urban context.

Understanding of environmental sustainability in the built environment: including design for day lighting, sunlight, shelter, natural ventilation and acoustic quality.

Understanding of design for universal accessibility.

Understanding of the local landscape and the relationship of buildings to the natural landscape.

Evidence of innovation in architecture.

Promotion of young architects and emerging architectural practices.

Professional insurance for the scope of work.

Annex to section III

3 Awarding criteria

Awarding criteria for negotiation after architectural competition (design contest)
(not exhaustive)

- Result of evaluation during the competition procedure
- Possible recommendations or suggestions for modification by the jury for the winning concept
- Detailed estimation of necessary investment, sequential costs and life cycle cost (LCC) on basis of the winning project (see EMAT Paper)
- Experience needed to guarantee the correct implementation of the project.
- Formation of a team to cover all necessary services or the capability of the winner to co-operate with those.
- Capacity needed for the scope of work to be contracted.
- Professional insurance for the scope of work
- Timetable for the delivery of the services
- The amount of fees for the scope of work

Annex to section III

4 Architectural Competition (Design Contest)

List of evaluation criteria is not exhaustive.

These criteria have to be specified on the basis of the criteria stated in the announcement and approved by the jury before forwarding the brief of the contest. Their significance for the evaluation of the entries has to be clearly stated and must match:

- The development goals
- Urban or site integration
- Programming and functional standards
- Design and spatial quality
- Quality in relation to ecological, environmental and technical standards
- Construction standards
- Investment and sequential costs and other economical aspects
- Flexibility of the structure or change of use and possibility for extension
- Respect for listed buildings.

(Corrected by TM and HGB 250505 – glossary and annex 3 awarding criteria)